



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for 2/25/2016 – **Approved 3/10/2016**

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT, Member), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Brian Colleran (CA, Conservation Administrator)

APAC taped: Yes

7:06 PM – Open Meeting

- **Confirmation of Agenda**
 - CA added a discussion on the tire chip removal plan at J. P. Routhier & Sons.
 - GB moved to confirm the agenda as amended; TT 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - JG moved to accept the minutes for 1/28/2016 as written; TT 2nd.
 - Motion approved 3-0 (BD, GB abstained).
 - GB moved to accept the minutes for 2/11/2016 as written; BT 2nd.
 - Motion approved 4-0 (TT abstained).
- **Public Hearing (cont'd.): Notice of Intent (NOI) – The Willows, Willow Road Development, LLC, MassDEP # 100-0387**
 - Dr. Desheng Wang, of Creative Land & Water Engineering, LLC, was present on behalf of the applicant, along with George Gallagher.
 - Issuance of an OOC was voted on and approved at ConCom's 2/11/2016 meeting, pending approval of the Special Conditions.
 - Dr. Wang asked for the wording of "Perpetual Condition 8" to be changed.
 - The condition mandates that no sodium chloride (road salt) be used within 100 ft. of wetlands or 200 ft. of a perennial stream.
 - Because of the slope of the road and safety concerns under icy conditions, resident Duncan Brown had previously questioned this restriction.
 - Dr. Wang suggested rewording this condition to specify no use of road salt IF the area "drains to a resource area and regulated buffer without significant dilution treatment...".
 - Dr. Wang said testing he did last winter showed that the stormwater management and drainage conditions for the road were working as planned and that the salinity level in the nearby retention pond was 0.
 - The construction of the new/relocated triplex for units 56-58 will only add roof and driveway runoff, where sodium chloride would not be used in any case.
 - GB suggested removing the Special Condition entirely from the OOC.
 - BD asked instead that, rather than re-numbering the OOC conditions, the OOC indicate that the language under Perpetual Condition 8 has been removed.
 - Going forward, BD said this condition should perhaps be dealt with as a note for work sites under construction – i.e., that no sodium chloride is to be used in the area until the stormwater management system is fully functioning.
 - GB moved to approve Special Conditions Attachment A for MassDEP OOC # 100-0387, with the removal of the terms of Perpetual Condition 8; TT 2nd.



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- Motion approved unanimously.
 - GB moved to close the Public Hearing for 100-0387; TT 2nd.
 - Motion approved unanimously.
 - Given the likelihood of the OOC being appealed by abutters, it was noted that the OOC does not have to be recorded at the Registry of Deeds until the appeal period has passed or an appeal has been resolved.
 - The 10-day appeal period begins on the date of issuance of the OOC.
 - For clarification, it is understood that the date of issuance is the date on which the signed OOC is released by ConCom and is either mailed to the applicant by CA or picked up in person by the applicant.
 - Going forward, BD asked CA to make it a new practice to email ConCom members as well as the applicant on the actual date of issuance so that there is documentation and a shared understanding of the final issuance date from which the appeal period commences.
 - Going forward, TT also suggested CA make it a new practice to include “findings” at the top of ConCom’s Special Conditions Attachment A.
 - By “findings”, TT means a summary paragraph of facts: e.g. a brief description of the work ConCom has approved; proximity to wetlands/riverfront; nature and amount of disturbance or impact within buffer zone or resource area; amount of mitigation if applicable, etc.
 - BD concurred and said ConCom should now require applicants to provide a one-paragraph project description at the submission of the NOI.
 - If an OOC is issued, this paragraph can be updated to reflect revisions made by the applicant and/or changes required by ConCom.
- **Unscheduled Discussion: Susan Andres, 10 Doug Road**
 - Resident Susan Andres asked ConCom for details on the Ayer 1 Solar Farm, reviewed by ConCom on 2/11/2016 under a Request for Determination of Applicability (RDA) Public Meeting.
 - Ms. Andres had not been satisfied with a Planning Board meeting the previous week on this project.
 - Ms. Andres said she and other neighbors have objections to plans to extend Rosewood Avenue, which she interpreted as meaning the nearby beaver dam will be taken down and the wetlands destroyed.
 - Ms. Andres said beavers have already been trapped and killed in this area by someone.
 - BD explained what was jurisdictional to ConCom on this project.
 - On 2/11, ConCom reviewed an RDA that was only for work in the panel areas from station 18+00 and north.
 - Work south of 18+00, for extending Rosewood Avenue for access to the arrays, will be covered under a future NOI.
 - The NOI will be subject to a Public Hearing and abutters must be notified.
 - If Ms. Andres is not a direct abutter, she can check ConCom’s posted agendas or call CA to find out when the NOI will be discussed.
 - To date, the NOI has not been submitted.
 - In addition, CA will check to ensure that the trapping and killing of the beavers was done legally.
 - This was the first ConCom has heard of their trapping and killing; previously ConCom understood that the DPW had been planning to install a beaver deceiver device.



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- **Public Meeting (cont'd.): RDA – MBTA Commuter Rail**
 - Re: proposed antenna/equipment installation for “positive train control” along Fitchburg commuter line.
 - On 1/14/2016, ConCom met with Holly Palmgren, of the MBTA, and Jessica Miess, of Ramaker & Associates.
 - The application at that point was deemed incomplete and inadequate and revisions/updates were requested.
 - CA recently advised the applicant that, if nothing further was heard, ConCom will close out the Public Meeting and they will have to begin the application process all over again.
 - Since then, CA has not heard anything new.
 - GB moved to close the Public Meeting; TT 2nd.
 - Motion approved unanimously.
- **Accounts Payable**
 - J & S Business Products: \$48.00, for printing of CA’s large and impressive Jurisdictional Parcels in Ayer poster.
 - GB moved to approve payment of \$48.00; TT 2nd.
 - Motion approved unanimously.
 - Beaver Solutions, LLC: \$495.00, annual maintenance contract to clean/repair beaver deceiver devices at Long Pond Dam and Rock Meadow Pond twice a year.
 - GB moved to approve payment of \$495 from ConCom account 01171; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Updating Ayer’s Wetlands Bylaw**
 - Commission members generally agreed it was time to review the Town’s Wetlands Protection Bylaw (Article XXVI) and draft an update to present for Town Meeting vote.
 - The last attempt to update the Bylaw took place in 2006 and did not succeed because it was not known at the time that a Bylaw already existed.
 - The existing Town Bylaw simply mirrors the State’s Wetland law.
 - BD said the Ayer Bylaw needs more specifics.
 - For example, the Town’s Bylaws now include Article LIII, ‘Enforcement’, which was passed in 2013.
 - This Bylaw recognizes the Commission as the “Enforcing Authority” for the Wetlands Protection Act, and gives the Commission the power to issue “Non-Criminal Disposition” fines of \$300/day for violations.
 - The Town’s Wetland Bylaw needs to be updated to reflect this.
 - This was suggested by Town Counsel as well.
 - Other things to consider in an updated Bylaw:
 - instituting a no-disturb zone abutting wetlands or rivers, and distinguishing its application between undisturbed land and previously-disturbed land;
 - expanding jurisdiction to oversee hydrologically-connected waters flowing into or out of ACECs;
 - expanding the language of the bylaw to allow the Commission to create and enforce regulations.
 - BD asked for time to be set aside on ConCom’s next agenda (3/10) and for Commission members to come prepared to discuss things they would like to see in an updated bylaw.



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- BD also asked CA to email Superintendent Mark Wetzel for DPW suggestions in this regard.
- A later comment from resident Mike Anuta advised ConCom to craft bylaw language that is generalized enough to allow for flexibility.
- **Discussion: Comments from other Town Departments**
 - BD noted that comments from DPW Superintendent Wetzel regarding the Ayer 1 solar project were received the day following ConCom's RDA Public Meeting on 2/11.
 - ConCom discussed whether projects over a certain size should automatically be passed by DPW for comment prior to ConCom making any rulings.
 - The question of what should be the cutoff for project size was discussed.
 - BD asked CA to solicit DPW Superintendent Wetzel's thoughts on this.
 - BD also asked CA to talk to Building Inspector Gabe Vellante to see if he would agree to compare projects that come before him for permits with CA's new map of Ayer parcels jurisdictional to ConCom review.
- **Discussion: Town Annual Report**
 - GB prepared a draft for ConCom's portion of the Annual Report and JG supplied the 2015 numbers for actions taken by ConCom (OOCs, DOAs, EOs, COCs, etc.).
 - GB moved to approve the draft for submission; TT 2nd.
 - Motion approved unanimously.
- **Discussion: J. P. Routhier & Sons Recycling Corporation: tire chip removal project**
 - ConCom issued a DOA at a Public Meeting on 1/14/2016, approving a plan to remove tire chips that have been pushed down a steep slope and into nearby wetlands.
 - J. P. Routhier has contracted with Buxton to perform this work.
 - CA said work is scheduled to begin next week, on or around 3/2.
 - However, CA noted that the ground is no longer fully frozen, contrary to conditions agreed upon at the Public Meeting.
 - BD said the ground is at least partially frozen deeper down and that it should still be okay for them to begin this work.
 - BD asked CA to visit the site regularly once work commences so that the contractor and applicant are aware the site will be monitored.
 - It was also noted that a copy of J. P. Routhier's revised snowplowing plan has been received, as requested.
- **CA Updates**
 - CA's Stupendous 'Jurisdictional Parcels in Ayer' Poster
 - CA has been researching costs for framing the poster.
 - Some vendors have suggested using a metal frame, rather than wood, due to the size of the poster and the weight of a frame.
 - CA was asked to have another copy of the poster printed, with the text adjusted so that no matte is required.
 - The current poster will be used as a 'field' copy, one that can be rolled up for transport and subject to defiling from the grubby fingerprints of ConCom members using it on site visits.
 - Ticketing Books
 - CA distributed ticketing books for Commissioners to use for wetlands violations.



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- The books are court and police approved.
 - Under Town Article LIII, fines would be \$300 and could be applied daily.
 - ConCom members issuing a ticket will need to provide accurate details: date, time, witnesses, applicability to the Wetland Bylaw, and an accompanying narrative description.
 - CA noted that the wording of Article LIII explicitly specifies commissioners as the enforcing officers, not the Conservation Administrator.
 - A number of details need to be worked out in the meantime, including:
 - Is a ticket valid if issued by a single commissioner or does it need a majority vote by the whole Commission?
 - BD noted that, except under extraordinary circumstances, there is little that could not wait up to 2 weeks for the next ConCom meeting.
 - If something that serious did arise, ConCom still has the ability to issue an Enforcement Order and a Cease & Desist.
 - BD asked that time be set aside at ConCom's 3/24 meeting to discuss the policy and mechanics of how ConCom should go about employing ticketing.
- Ethics/Conflict of Interest Law
 - CA has sent ConCom members the link to the Conflict of Interest Law for Municipal Employees.
 - Town board members have been asked to sign a receipt acknowledging current review of the law.
 - The receipt should be turned in to the Carly Antonellis, in the Board of Selectmen's office.
- Family Dollar, 19 Fitchburg Road
 - BD will stop by to view the garbage that has apparently been dumped into the woods abutting the wetlands in the back of the property.
- The Willows Subdivision
 - CA said a blowout in a sediment fence has been repaired.
- Geosyntec
 - BD has not heard back from Robert Hartzel, of Geosyntec, regarding BD's submission of comments to the latest draft.
- **Member Updates**
 - TT said a Land Conservation Conference will be held on April 2 at Worcester Technical High School.
 - The conference is sponsored by the Massachusetts Land Trust Coalition.
 - BT noted that the deadline for submitting an application for a Water Quality Management Planning grant, from MassDEP, is March 25.
 - BD asked CA to forward this information to DPW Superintendent Wetzel.
- **9:55 PM – Adjourn Meeting**
 - JG moved to adjourn; GB 2nd.
 - Motion approved unanimously.